

July 8, 2016



Talbot County Planning Commission
Final Decision Summary

Wednesday, June 1, 2016 at 9:00 a.m.

Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

Attendance:

Commission Members:

William Boicourt, Chairman (absent)
John N. Fischer, Jr., Vice Chairman
Michael Sullivan
Paul Spies
Phillip "Chip" Councill

Staff:

Mary Kay Verdery, Planning Officer
Jeremy Rothwell, Planner I
Martin Sokolich, Senior Planner
Mike Pullen, County Attorney
Carole Sellman, Recording Secretary

1. Call to Order—Commissioner Fischer called the meeting to order at 9:00 a.m. Commissioner Fischer explained there were only four (4) members of the Commission present and that a tie vote is considered a negative vote. If any applicant chooses they can withdraw without penalty until the next month, none chose to do so.

2. Decision Summary Review—May 4, 2016—The Commission noted the following corrections to the draft decision summary:

- a. Line 285, is an incomplete sentence, should read: "Mr. Mertaugh stated the root mass and the slope were complicating factors."
- b. Line 795, correct to read: "Commissioner Fischer stated that at one time the record of the Planning Commission meetings were recorded as Minutes. When Sandy Coyman was Planning Director it was changed to the Discussion Summary."

Commissioner Spies moved to approve the draft Planning Commission Decision Summary for May 4, 2016, as amended; Commissioner Councill seconded the motion. The motion carried unanimously.

3. Old Business—None.

4. New Business

- a. Administrative Variance— Laurens MacLure and Anne MacLure, #A229—6650 Thornton Road, Easton, MD 21601, (map 40, grid 17, parcel 30, zoned Rural Residential/Critical Area), Lars Erickson, East Bay Construction Services LLC, Agent.

Mr. Rothwell presented the staff report of the applicant's request for an Administrative Variance for five separate items:

- 1) To expand the gross floor area (GFA) of an existing 1 ½ story dwelling by approximately 19.79% (405 sq. ft.) within the 100 ft. Shoreline Development Buffer.
- 2) To construct an approximately 273 sq. ft. covered porch on the southwest (waterside).
- 3) To construct an approximately 142 sq. ft. screened porch the southwest (waterside) face of the existing primary dwelling within the 100 ft. Shoreline Development Buffer to within 78 ft. of MHW.
- 4) To construct an approximately 72 sq. ft. uncovered porch and steps to grade on the southwest (waterside) face of the existing primary dwelling within the 100 ft. Shoreline Development Buffer.
- 5) To construct an approximately 15 sq. ft. covered porch/stoop and steps on the southwest (waterside) face of the existing dwelling within the 100 ft. Shoreline Development Buffer.

As part of the construction of the before-mentioned improvements, the applicant is proposing to remove approximately 933 sq. ft. of existing lot coverage (mostly sidewalks and gravel areas). The proposed improvements, however, will result in a net increase of 500 sq. ft. of lot coverage (388 sq. ft. within the Shoreline Development Buffer, and 112 sq. ft. outside the Buffer); from approximately 11,436 sq. ft. (13.0%) of lot coverage to 11,936 sq. ft. (13.6%). In addition, the applicant is proposing to construct a 191 sq. ft. covered porch outside the Shoreline Development Buffer, approximately 79 sq. ft. of new GFA outside the Buffer, and to raise the pitch of the roof (located partially in the Buffer) by approximately 4'-9". These three activities (and all other ancillary improvements outside the Buffer) are not subject to this Administrative Variance request.

The parcel is located in the Thornteton subdivision, one of the County's older subdivisions. There is a porch on the north side of the house and a walkway to be removed. The proposed second story improvements include a standard shed dormer. There will be a complete internal reconfiguration of the house. They are putting in a dining room and expanding the living room and great room.

Staff recommendations include:

1. The applicant shall make an application to the Office of Permits and Inspections, and follow all rules, procedures, and construction timelines as outlined by regarding new construction.
2. The applicant shall commence construction on the proposed improvements within eighteen (18) months from the date of the Planning Office's 'Notice to Proceed'.
3. Natural vegetation of an area three times the extent of the approved disturbance in the buffer shall be planted in the buffer or on the property if

planting in the Buffer cannot be reasonably accomplished. Disturbance outside the buffer shall be 1:1 ratio. A Buffer Management Plan application may be obtained through the Department of Planning and Zoning.

4. Since the dwelling on the subject parcel is completely within the 100-year floodplain (Zone AE), the applicant shall be required to comply with the standards and requirements set forth in the Floodplain Management Ordinance (Chapter 70).

Ryan Showalter attended on behalf of applicants Laurens “Mac” and Anne MacLure, as did Lars Erickson. Mr. Showalter stated this should be straight forward, and had Mr. MacLure explain why this project is being undertaken.

Mr. MacLure explained he bought the property in 2014 and he is looking forward to retiring in the next 2-3 years. They currently live in Baltimore in a larger home. They plan to downsize, and to bring his mother-in-law who has mobility issues, ~~she~~ and who is currently using a walker. He married an Irish Catholic girl with an extended family, who loves to entertain. Mr. MacClure explained that this is a beautiful house in a beautiful setting but they need a little more space both for their mother-in-law and for entertaining. Lars Erickson stated they looked at all of the different possible ways to grow the property. They were limited by the physical constraints of the garage and the ingress and egress from the attached garage. The great room is growing by six feet and the dining room is growing by ten feet. There is an a additional screen porch for family gathering and access for his mother-in-law to be a part of family gatherings. Growing toward the road was problematic. They were able to remove lot coverage, sidewalks, gravel beds, and steps. Though they increased lot coverage they stayed well within the amount allowed. The existing bedrooms had to be connected to the stair steps that could not be moved. All of these things had to be taken into account.

Commissioner Spies asked where the Critical Area mitigation would be. Mr. Showalter stated it would have to be in the Buffer, but the buffer management plan had not been completed yet. It would ~~be~~ require about 2,400-2,500 square feet of mitigation.

Commissioner Fischer asked for public comments; none were made.

Commissioner Spies moved to recommend to the Planning Officer to approve the administrative variance for Laurens MacLure and Anne MacLure, 6650 Thornteton Road, Easton, MD 21601, provided compliance with staff recommendations occurs, except for staff condition No. 5; Commissioner Sullivan seconded the motion. The motion carried unanimously.

- b. Tangent Energy Solutions – Shortall Solar Farm—30711 Matthewstown Road, Easton, MD 21601 (map 26, grid 17, parcel 30, zoned Agricultural Conservation), Tim Glass, Lane Engineering, LLC, Agent.

146
147 Tim Glass, Lane Engineering, LLC and Andy Meserve, Tangent Energy Solutions
148 appeared on behalf of applicant.
149

150 Mr. Rothwell presented the staff report for a major site plan to construct an
151 approximately 5.4 acre solar array field with an approximately ten foot wide
152 gravel drive approximately 700 feet long. This 1MW facility is classified as a
153 utilities structures use. Also before the Commission is the Special Exception and
154 Landscape Waiver. The Landscape Waiver consists of two parts, the first part is
155 the screening requirement, the second part is a street tree waiver. Both of these are
156 required for major site plans. The property is zoned Agricultural Conservation
157 (AC) and is located on Matthewstown Road. On the eastern side of the property is
158 an old gravel pit which they have a permit for. This site has some hydric soils but
159 meets all the expanded buffer requirements. Mr. Rothwell presented photos
160 showing where the array is proposed to be placed. The gravel driveway that runs
161 parallel to Matthewstown Road will be used as the access driveway to access the
162 site. This drive is more or less a field delineation and everything on the left is
163 planted in row crops every year. Everything on the right is a fenced pastureland
164 and hay field to accommodate the 20-25 steers on the farm. Mr. Rothwell showed
165 another aerial of the site and stated once the array was completed, that it would
166 not be visible from Matthewstown Road.
167

168 Mr. Rothwell stated when the Planning Commission had their previous
169 discussions regarding the placement of solar arrays, Commissioner Councill
170 talked about putting the array immediately adjacent to the homestead. Mr.
171 Rothwell generally agreed, but if you did that on this property, the solar array
172 would be visible from the roadway. If you put it behind the homestead it would be
173 difficult because of the barns and the fenced pound yard accommodating the
174 steers. On the left side of the homestead there is another residence. Mr. Rothwell
175 stated the proposed location is not visible from the roadway, and would minimize
176 the disturbance to agricultural lands.
177

178 Staff recommendations include:
179

- 180 1) The applicant shall be required to obtain a Special Exception from the
181 Board of Appeals to construct the proposed photovoltaic field.
- 182 2) Address the May 11, 2016 TAC comments from the Department of
183 Planning & Zoning, Department of Public Works, Environmental Health
184 Department, Talbot Soil Conservation District, and the State Highway
185 Administration (SHA) prior to CRM submission.
- 186 3) The applicant shall commence construction on the proposed
187 improvements within twelve (12) months from the date of final approval.
- 188 4) The applicant shall make applications to and follow all of the rules,
189 procedures, and construction timelines as outlined by the Office of
190 Permits and Inspections regarding new construction.
- 191 5) This project will be required to address forest conservation, to include

mitigation for the removal of any trees

Tim Glass pointed out the lease agreement between Tangent and the property owner, and explained that the proposed solar arrays are located the area the land owner wanted to use. This area is buffered by forest on three sides. You will not be able to see the parcels from any roadway. It will be enclosed by a chain link fence which will be gated and locked with "No Trespass" signs. The equipment pad will be located within the fenced area, and the interconnection overhead utility wires will connect with Choptank Electric at Mullet Branch Road. Mr. Glass stated they tried to use the existing infrastructure for access. There is a small division between fields and a small electric single/double strand fence, and enough room for a turnaround. This proposed facility will be quiet passive neighbors. There will be no traffic generated from the proposed facility; with only one worker coming by once a quarter. There is no proposed lighting associated with the proposed facility, although there will be one pole light that if a worker needs it the worker can turn it on, and then turn it off when he leaves. Mr. Glass explained that given the overall location, the size, how it fits with the land and the natural resources around it, the site will not require any clearing and minimal land grading and disturbance. Mr. Meserve stated that in comparison to a lot of other solar panel arrangements you may have seen or approved in the past, he believes this represents the best fit and most appropriate location for a relatively small solar array project for five acres.

Commissioner Sullivan asked what the owner was going to be doing with the electricity? Mr. Glass stated the electricity is all being sold directly to Choptank Electric Cooperative as part of a 25 year lease. At end of the lease period, if it is not renewed, the land must be returned to its original state. Commissioner Fischer asked Mr. Meserve to describe Tangent Energy Solutions to the Commission.

Mr. Meserve stated Tangent Energy Solutions (TES) is an energy development company out of Pennsylvania, responsible for construction of large and medium scale solar and natural gas projects. He stated they also manage energy for small and municipal utilities. Mostly what they do is renewable generation. This is the first site on Maryland's Eastern Shore, while they have built similar facilities in Pennsylvania, the Western Shore of Maryland, North Carolina and New Jersey. He explained that Tangent Energy Solutions has been in business since 2009. Mr. Meserve stated they bring in a third party investor which ~~has~~ holds the debt on the project. He stated there is a bank that is involved on this project. There will always be somebody behind them who has an interest. If Tangent Energy Solutions went away, the project would still operate as designed, noting that there is a residual value on the equipment. Commissioner Sullivan asked what the collateral of the loan was? Mr. Meserve stated it was the lease and the equipment.

Commissioner Councill asked if the gravel pit was considered for the location of the proposed solar array. Mr. Meserve stated that the gravel pit was still under lease, so it was not considered. Commissioner Councill asked if this project could

238 cause the land to be reassessed and come out of agricultural use. Mr. Meserve
239 stated as per the lease agreement with the landowner, if the property taxes
240 increase due to this lease that Tangent Energy Solutions would be responsible for
241 that increase. Mr. Meserve stated there is specific taxation language in the lease
242 and if there is increase in the taxes it is Tangent's responsibility for the increase.
243 Commissioner Councell asked about the maintenance agreement. Mr. Meserve
244 said the lease states they are responsible for maintaining everything inside the
245 fence. TES will hire a landscaping company to come in and maintain the grass.
246 Commissioner Councell mentioned that while the lease agreement requires that
247 the equipment be removed, and that the solar equipment has monetary value, that
248 some jurisdictions also the removal of the equipment to be bonded. Mr. Meserve
249 stated that there are very few jurisdictions that require a bond for the removal of
250 the equipment. He said they would rather continue to have the lease renewed and
251 for the site maintain electricity production. There is a residual fair market value to
252 the equipment, although in twenty-five years it is tough to say what that value
253 would be. Commissioner Councell asked Mr. Pullen how difficult it would be to
254 ask for a bond for the removal of the equipment. Mr. Pullen stated it would not be
255 difficult. Mr. Pullen explained that the Planning Commission could recommend to
256 the Board of Appeals that a bond be posted for the cost of removal. He believes it
257 would have to be imposed by the Board of Appeals as a condition of granting the
258 Special Exception. Commissioner Councell stated since this is a fairly secure
259 location, whether the fence is a necessity? Mr. Meserve stated they generally have
260 a fence to delineate the boundaries, and for a little bit of protection. As far as the
261 bond, Mr. Meserve explained he would have to check with their insurance
262 company to see if they could make it work.

263
264 Commissioner Councell asked how difficult would it be to do an assessment of
265 the gravel pit? He stated he hated to see good farm land come out of production.
266 Mr. Glass stated there was still an active mining lease on that pit. Mr. Meserve
267 stated they would have to spend a few thousand dollars on that. Mr. Shortall
268 relayed to him that the current location is his least productive location. Mr.
269 Meserve stated they are just looking for access to the sun. He noted that
270 Matthewstown Road is actually in Easton Utilities Electric service district, while
271 Mullet Branch is in Choptank's service district. Since Tangent's lease agreement
272 is with Choptank Electric, the proposed solar facility must tie into the
273 transmission lines along Mullet Branch Road.

274
275 Mr. Pullen added that he believes the Planning Commission could also impose the
276 bond as a condition of the site plan approval.

277
278 Commissioner Fischer asked for public comments.

279
280 Dan Watson, a local resident, spoke in strong support of this project. He had a
281 question: Is the wooded buffer that wraps all around the property on the north, the
282 east, and around the south creek line protected from development? Mr. Rothwell
283 stated the wooded area along the creek bank is classified as an 'intermittent

stream’ and protected by a 100 foot stream buffer is under our County Zoning Ordinance and COMAR.

Commissioner Fischer asked where does the consideration of the gravel pit fall? Mr. Rothwell stated there is a lease agreement. Mr. Pullen stated that if the Commission wanted to defer the decision and ask the applicant to re-examine the location, do the soil tests, then that would be one of the options, then the hearing could be continued until those tests were available. If the Commission feels that was worthwhile, the case could be continued until completion of those studies. Commissioner Sullivan stated that before you do the soils testing you would need to determine if there is an active lease agreement on that property, and if there is one, and if Mr. Shortall is not willing to cancel it for any reason, then it is not an available site. Commissioner Councill stated the question was probably answered when Mr. Meserve said Easton Utilities was on Matthewstown Road. It is not feasible to run overhead utility lines from that gravel pit to Mullet Branch Road. So this is the second best location for that farm.

Commissioner Spies moved to approve the major site plan for Tangent Energy Solutions—Theresa Shortall Solar Array, located at 30711 Matthewstown Road, Easton, Maryland for a 1 MW solar array and associated equipment and inverters, fence and electric equipment on approximately 5.48 acres, with all staff conditions being complied with; with the addition of a bond in favor of Talbot County, for the removal of the solar arrays if the solar array system is not used for a period of one year. Commissioner Sullivan seconded the motion. The motion carried unanimously.

Commissioner Councill moved to approve the landscape waiver for the property located at 30711 Matthewstown Road, Easton, Maryland; Commissioner Spies seconded the motion. The motion carried unanimously.

Commissioner Spies moved to recommend to the Board of Appeal the approval of the Special Exception for Tangent Energy Solutions—Theresa Shortall Solar Array, located at 30711 Matthewstown Road, Easton, Maryland, to establish a “utility structure” use consisting of photovoltaic solar panel arrays, associated inverters, equipment and access road on approximately 5.48 acres; and to require a bond in favor of Talbot County for the removal of the solar arrays, if the solar array system is not used for a period of one year; Commissioner Sullivan seconded the motion. The motion carried unanimously.

c. Proposed Council amendments to 2016 Comprehensive Plan

Ms. Verdery stated the Comprehensive Plan is moving right along, there is a Council vote anticipated on June 7th at a special hearing. Toward that goal County Council has introduced six amendments to the Comprehensive Plan.

330
331 Ms. Verdery stated that Amendment 1 proposes replacing the word “should” with
332 the word “shall”. In seven land use policies in Chapter 2 of the existing
333 Comprehensive Plan the word “should” verses the word “shall” is used
334 throughout the Plan. In looking at it from a Zoning Ordinance/Comprehensive
335 Plan perspective we took the opportunity to go through those documents. When
336 you look at the Zoning Ordinance it has the word “should” 17 times and the word
337 “shall” 178 times. That really is where the word “shall” is typically more
338 restrictive in defining the regulations that relate to the policies that come out of
339 the Comprehensive Plans. Within the 2005 Comprehensive Plan the word
340 “should” is used over 300 times and the word “shall” is used 21 times. That
341 relates to the balance of where the “should” and “shall” are through our current
342 Plan. The Zoning Ordinance is typically the regulatory document that puts into
343 place where we want the policies to be implemented. Commissioner Sullivan
344 stated that so according to our Codes we “should” have more shalls. Ms. Verdery
345 stated she wanted to show where historically we have had “should” and “shall”.
346 Mike Pullen will give some of the legal responsibilities of using the word
347 “should” versus “shall”. Martin Sokolich provided information related to specific
348 projects and how that could potentially affect those.

349
350 Mr. Pullen stated that in a legal perspective, as policymakers it is the
351 Commission’s responsibility to evaluate projects and determine what is consistent
352 with the Comprehensive Plan and meets all the goals, objectives, criteria,
353 requirement and intent of the Comprehensive Plan. There are so many intangibles,
354 so the Comprehensive Plan is a guiding document to apply case by case. The
355 County Council also has that same function. When you take the shoulds out of the
356 plan and you put “shall” into the plan, what you are doing from a legal
357 perspective you are limiting your discretion and limiting your power and
358 transferring that power to individuals and litigants to use the Comprehensive Plan
359 against the decisions that the policy makers have made. The problem is when you
360 change “should” to “shall” you increase the likelihood of litigation, challenge
361 decisions the Commission has made. With the “shall” in the Plan you are
362 obligated to follow that policy. More importantly you are increasing the
363 likelihood such a suit will be successful. You are giving the authority to the judge
364 to look at the decision and the policy and compare the two and see if this land use
365 decision actually implements the mandatory policy that is in the Plan. Mr. Pullen
366 stated for many situations that may be perfectly all right. But for the types of
367 projects that are controversial or maybe a neighbor is unhappy with it, he used an
368 example. The Allen Harim plant in Cordova, if that is to be repurposed in some
369 fashion we cannot envision right now and the sewage treatment system which is
370 spray irrigation might be repurposed or modified in some fashion and the
371 Commission thinks it is a good idea, so it is agreed to amend the water and sewer
372 comprehensive plan which the Commission has a veto over, so they would have
373 to get three of your votes, and the County Council thinks it is a good idea and they
374 would have to get three of their votes. Then they put it into place and they found it
375 was consistent with the Comprehensive Plan under a “should” like most

commercial and industrial development “should” take place adjacent to the towns. If you wanted to put new commercial or industrial in Cordova in that location and you had a neighbor who was unhappy with that the neighbor could file a suit in Circuit Court saying one of the requirements of the state law is that all land use decisions have to be consistent with our Comprehensive Plan and because our Comprehensive Plan says all of this development “shall” be located adjacent to the town this is inconsistent therefore this project cannot go forward. Now you have put it in the judges bailiwick. Who knows what kind of a case that involves. Mr. Pullen stated he points that out because he believes the way the Comprehensive Plan is to work is as the guiding principles with some flexibility for the Commission and the County Council to apply those principles. The word “should” does give more discretion than the word “shall”. The language in the current 2016 draft is really taken from the 2005 Plan, but not to change “should” or “shall”. The 2005 Plan seems to have worked. The County would be subject to more legal challenges with the word “shall” instead of “should”.

Commissioner Fischer stated that the word “should” allows many more things to happen. Ms. Verdery stated that is a guidance policy for the regulatory documents, that is why we create a Zoning Ordinance that says we can have these industrial uses within a village center but you cannot have it within an agricultural area, or you can have it but it is limited to this size, or you can have it in these locations. The “should” provides the opportunity to create guidance documents that defines where you have it.

Commissioner Fischer stated we have converted a Comprehensive Plan with a direction of “should” to a Zoning Ordinance with “shall”. Mr. Rothwell stated one difference is Policy 2.14, our current Zoning Ordinance allows manufacturing as a special exception use in the villages and it has been a special exception use since the 1991 Zoning Ordinance. Manufacturing and a couple of other uses will no longer be special exception uses because that is not directly supporting agriculture or maritime.

Commissioner Councell stated he understood the importance of the word “shall”. But he said it seems to him if the word “shall” was put in there appears to be no reason for the Board of Appeals or maybe even the Planning Commission. Commissioner Councell read through the proposed policies. He stated one of the things the agricultural community gave up was some of their uses. One of the things they did want was the ability to put agriculturally related commercial businesses in the AC zone because grain mills, fertilizer plants, heavy equipment, thus noise aren’t really compatible in designated growth areas. He questioned if there is a village that is rundown older house, small lots, does this mean that if you want to build there you have to make it look like a rundown older house to maintain the character of the neighborhood. He stated he knows that is taking it a little too far. Commissioner Fischer stated the character refers to the type of structure and not the maintenance of it. Mr. Rothwell stated if you have a 1,200-1,500 square foot house you cannot build a McMansion of 5,000 square feet. Mr.

422 Sokolich stated listening to the Planning Commission today it appears the
423 Planning Commission does feel in that “shall” environment, not “should”. You
424 can’t have a perfect expectation of what all the individual decisions might come
425 to. For example, discussions of construction in a buffer, it is a negotiated process
426 you go through with the staff and the Planning Commission. Mr. Sokolich said to
427 be able to make that accommodation make sense for that owner of that property at
428 that time there are a lot of shalls in there. He could not put an excessive amount of
429 development in that buffer. It is a set of preferences instead of a set of absolutes.
430 It is like the solar, we don’t have any absolute regulations, but staff went through
431 a process of what is a workable site and a workable plan. The Commission further
432 enhanced that today by trying to make sure that there were some assurances in
433 place that don’t exist in any ordinance.
434

435 Commissioner Spies said if we change the “shall” it puts the burden on the
436 County to prove it, if you leave it at “should” it puts the burden on the applicant to
437 prove that it fits and that is where he thinks it “should” be. The “should” is the
438 guideline, if someone wants to do something outside of that guideline, he has the
439 burden to prove why it “should” be outside what it says and if we switch it to
440 “shall” that burden comes to the Commission to prove why it “should” not. That
441 is why he said he is leaning to the “should”.
442

443 Commissioner Sullivan stated he came in believing they “should” put the “shall”
444 in. For instance in 2.16 it talks about ““shall” derive primarily”, there is some
445 flexibility built into 2.16 that is not built into the others. What we are really
446 playing with here is the idea of - we like the idea of special exceptions because
447 there is an exception to every rule, and the question is how do you control it.
448 Maybe it is too controlling. He does not feel we can pass these. One of the reasons
449 he is stuck on not inserting “shall” was, in 2005 hundreds of people spent
450 thousands of hours and enormous community input into the Plan. We make
451 amendments to the new plan, and more public input than he had seen on any
452 individual item. It is along the same lines but he thinks the community has the
453 right to say we have already said it and you “shall” do what we want you to do.
454 But it can’t be put in a box. With “shall”, it is our job to apply the intent, with the
455 community consensus, to all the individual Code items, with a certain amount of
456 flexibility, there are exceptions to every rule. One or two of these policies do and
457 the others don’t. Commissioner Spies stated if you put the “shall” in you better
458 have a pretty good crystal ball. You look at the STAR legislation that we all
459 passed unanimously and got huge support for a decade ago we would not have
460 thought that was needed because it was a successful business. Counties around us
461 are developing and it has become a less successful business. You put a whole
462 bunch of shalls in who knows what happens down the road. Agriculture
463 commodity prices stay at all times low or drop even lower and we need a boost in
464 the arm for a community. The reason we have a Board like this is to make them
465 bring the burden of proof as to why we you need to be outside of our guidelines of
466 our Comprehensive Plan. If you put the shalls in there it makes him nervous about
467 too much in the box.

468
469 **Commissioner Sullivan moved to recommend not to support Amendment 1,**
470 **the word shall does not provide enough flexibility to deal with issues that**
471 **might come before the Planning Commission in the next ten years;**
472 **Commissioner Councill seconded. The motion carried unanimously.**
473

474 Ms. Verdery stated that Amendment 2 relates to electronic message signage and
475 stated that electronic message signage “should” not be permitted. Our current
476 Zoning Ordinance is very specific to what type of signage and if it can or cannot
477 be electronic and where it can be located. That is why it was taken out of the text.
478 Commissioner Sullivan stated that they did not need “shall” there because the
479 Code stated what was needed regarding signage. Commissioner Fischer stated this
480 is Chapter Nine, the Villages, so do you want to have somewhere in Bozman,
481 Claiborne, Neavitt or in Sherwood, some business to put a flashing sign in front of
482 their house. Ms. Verdery stated the Code does not allow revolving, animated or
483 any other movements in the sign, or to be illuminated overnight. There are certain
484 restrictions in the Code. It can be an electronic message but cannot be flashing or
485 intermittent lights or changing. Commissioner Fischer said in Sherwood there is
486 Talbot Arms a fellow who sells firearms by catalog or repairs firearms. So he
487 could have a sign by neon as long as it did not flash. Ms. Verdery stated that is not
488 a commercial business per se, but for the sake of discussion if there were a
489 commercial business there they would be able to have electronic signage there.
490 Commissioner Spies clarified his understanding that what was meant was a
491 stagnant sign with the business name, for example, Triple Creek Winery, would
492 be fine, but a sign that changed would not be acceptable. Ms. Verdery stated that
493 is the concern with having it in the Comprehensive Plan because it does not say
494 whether it flashes or not, whether it is in a home occupation or commercial
495 business. Commissioner Fischer stated these are villages we are talking about, we
496 are not talking about Matthewstown Road or Route 50, we are talking about
497 Claiborne. Mr. Sokolich stated and Tilghman, this is the problem right now, all
498 twenty-two of our villages. What affects Claiborne also affects the largest
499 villages. Commissioner Councill stated when we prepare the village master plans
500 we could incorporate this issue into the master plans. Commissioner Spies stated
501 his concern is people wanting to change the County too much. Some of these
502 amendments are trying to use the Comprehensive Plan to limit stuff and would be
503 better dealt with in other locations. Commissioner Sullivan stated we have not had
504 a lot of sign issues, not in the villages anyway.
505

506 **Commissioner Councill moved to recommend not to support Amendment 2;**
507 **Commissioner Sullivan seconded the motion. The motion carried**
508 **unanimously.**
509

510 Ms. Verdery stated that Amendment 3 describes a new policy in Section 9.17
511 which is a formula to derive the average development density and use the
512 resulting calculation to set the minimum lot size for new subdivisions in the
513 village. The language in the existing draft Plan emphasizes the County policy for

determining density such as using language carried forward from the 2005 Plan. We have discussed as we move forward the opportunity of applying village hamlet, village center and village residential zoning densities with our zoning ordinance because we recognize that all villages are not the same. Mr. Sokolich stated you would end up with a couple of villages with one or two very large lots and then a lot of smaller lots. If you include the larger lots it skews things in a way that would cause sprawl in the villages. Ms. Verdery stated that if look at the example using the language proposed in Amendment No. 3 you come out with a lot size of 1.05 acres. But if you actually look at the reality of the parcels over 85% are actually less than 0.66 acres, so it does not represent the true character of the village using that equation. She stated she has concerns using this method to determine the parcel size for the village center. Ms. Verdery stated that villages such as Neavitt and Cordova have a core with very small lots that were the true beginning of the village. Then they have grown over time and the further away you get from the core the larger the parcels seem to get. She stated you want to take that into consideration moving forward and potentially even having more than one zoning district, like maybe village hamlet or village residential, like VH1 or VH2 in a village. We don't want to create nonconforming lots because we are trying to accommodate the much larger parcels that surround the village. So we have concerns as to how that calculation may affect the villages. Commissioner Councill stated he would go back to the village master plans, each village is so different he feels we cannot sweep all of the villages with one brush. If you take Longwoods or Wye Mills as they exist today Longwoods would have a 5 acre density. Mr. Rothwell stated if you take Wye Mills you have the Nagel property and that "should" not be used for calculating density. Commissioner Councill stated if you get down to the village master plans you could say look this is the representation of this village, this is the density we would like to see. Commissioner Fischer stated that we will be dealing with zoning and density long before we will be doing the Master Plan. Commissioner Sullivan stated what we are really saying is this does not fit right now. Commissioner Fischer stated he is reluctant to get confined by a formula, although this might be a tool we can use as we move along in some way as part of the package we look at.

Commissioner Spies moved to recommend not to support Amendment 3. A single formula for all of the villages is not the way to go. Commissioner Councill seconded the motion. The motion carried unanimously.

Ms. Verdery stated that Amendment 4 proposes changes to a tier map for an area located on Route 50 in the southern part of the County identified as the ferry boat area from a Tier 3-A to a Tier 3-C. This amendment was requested by the property owner in that area and we are looking to provide them with a tier that allows some opportunity for sewer if it happens to come their way. It is not an area that we have plans to serve. But if they are able to develop some opportunities we are going to support that by giving them a Tier 3-C versus a Tier 3-A classification.

Commissioner Councill stated this was pretty straight forward. This is a new owner who has a reputation for wanting things right. Commissioner Fischer asked if this landowner is the owner of the ferry? Ms. Verdery stated the ferry and the marina. Commissioner Fischer asked if the other landowners have agreed they would like to be Tier 3-C? Ms. Verdery said that definitely the ones that run along Route 50 that are commercial. She is not sure if there has been communication with the residential properties, she knows they are properties that are repetitive flood loss properties and they have lots of limitations and restrictions to expand the SDAs, so if the opportunity came their way they would be interested.

Commissioner Councill moved to recommend to support Amendment 4; Commissioner Spies seconded the motion. The motion carried unanimously.

Ms. Verdery stated that Amendment 5 is that we adopt the digital version of the Tier map. As you know we have been through this process with the Flood Insurance Rate Maps, and some of the other zoning maps that we have been adopting recently. We have included in the legislation that we also adopt those electronically. We provide the GIS service on our web page so the public can access that information. So we want to adopt this Tier map that will also become part of that resource for the community and allows you to zoom out parcel by parcel and look at that information instead of trying to look at the paper map.

Commissioner Councill moved to recommend to support Amendment 5; Commissioner Sullivan seconded the motion. The motion carried unanimously.

Ms. Verdery stated that Amendment 6 is a revision to Policy 9.15. She believes this is in response to opposition to amendment 9.17. This is an alternative introduced by a Council member relating to determining the density for village zoning. Within her amendment she notes that the density “shall” reflect the lot sizes existing after the zoning boundary modifications, existing dwelling units per acres and other factors will be considered through the rezoning process. Keeping in mind the unique character of the village or portion thereof. The purpose of some of those include the opportunity to wait until we have completed the redistricting and re-boundary, determining where the village center boundaries will be, then determining what the village zoning will be. As we noted several locations there are properties that only a portion of the property will be located within the village. We want to be certain we are taking into consideration those modifications first and then looking at the density.

Commissioner Councill stated when you look at the different villages and then we are back to the word “shall”, “Densities shall reflect village lot sizes existing”, so what does that mean when we have a village with several different lot sizes. Ms. Verdery stated that is where the example of VH1, VH2 and VH3, kind of a low, medium, high density can be used. We may have more than one density that is set out for a village. So in VH1 you might have 3 units per acre, in VH2 you

might 1 dwelling unit per two acres. That would be part of the process we would go through when we do the remapping. Commissioner Fischer asked if this amendment would make the staffs job easier? Ms. Verdery stated this does not impact their ability to do that. It recognizes that they need to go through the zoning process first and set the boundaries and village locations first.

**Commissioner Cuncell moved to recommend to support Amendment 6;
Commissioner Spies seconded the motion. The motion carried unanimously.**

5. Discussions Items

- a. Shore Real Estate Investment, LLC – withdrawn.

6. Staff Matters

- a. Easton Point

Ms. Verdery stated there was a meeting last night with the County Council and they discussed Easton Point and the proposal by the owners of several of those properties to be annexed within the town. They have come to us as property owners and asked if we want to participate in that process. In having some of those conversations the Easton Point Economic Development Committee has come to us and want us to put language in the Countryside Preservation that supports some of the activities they want to do. They cannot get funding if the Easton Comprehensive Plan and the Talbot County Comprehensive Plan are not consistent. Ms. Verdery stated she did not make copies because she thought they would be here today. The amendment would be in Chapter 3, on page 3-10 where we talk about the port services, we would add a paragraph that state: “The County “shall” work with the Town of Easton and the Easton Economic Development Corporation to pursue funding opportunities for the purpose of developing studies to include traffic, economic development and environmental impact for Easton Point and the Port Street corridor. The traffic study “shall” count for vehicular, non-motorized and pedestrian modes of transportation.” Basically they want us to support them in the opportunity to participate in some grant funding. Ms. Verdery stated their original language said we would support their small area plan that they do not even have. So we were very reluctant to support something we have not even seen. So we talked with them about the need to have these studies completed. So this language allows them to apply for grant funding and other opportunities. Commission Members stated they would be supportive.

Mr. Rothwell stated the discussion item for Shore Real Estate Investment, LLC for a proposed cottage industry excavating business has been withdrawn.

b. Solar Moratorium

Ms. Verdery stated last night there was a meeting with the County Council. They developed language for a six month moratorium for the solar array. They would like to know if there are two members of the Planning Commission who would like to participate. It was agreed that Commissioner Councell and Commissioner Boicourt would be on the panel. Commissioner Councell stated it was his understanding the moratorium would not affect projects under two acres. Commissioner Spies stated he talked to a large property manager in Kent and Queen Anne's County and scale of the projects coming in those Counties are pretty obscene and amount of money they are paying for rental rates are up over \$1,000 an acre and they are wiping out large, large tracks of land.

Commissioner Sullivan asked if it was true that the state can override local regulations? You could not put a coal fire plant anywhere in Talbot County, so why can you put a solar plant? Mr. Pullen stated there is a case from the 1990s where there was a transmission line 69,000 kilovolts, there was a limit above which the public service commission claims pre-emptive authority to regulate the power lines. In the current dispute about the Kent County solar panels the opponents asked for a pre-hearing decision on the question of pre-emption and the administrative public utility judge denied that motion. He said the state retained authority under the Certificate of Public Convenience and necessity to determine whether that site meets their criteria. But it is really their call under state criteria, not local zoning criteria.

Commissioner Spies stated the scary thing is older family member passes away, three siblings all live in other states with no desire to have a farm or agriculture, so they rent it for \$125 an acre or they get \$500 an acre with the solar, so we lose large tracts of farms. Commissioner Fischer also stated there is the danger of the farms not farmed by the owners. Commissioner Spies stated maybe it does get converted back into farmland in twenty-five years, but that is one farmer lost. Commissioner Sullivan stated in twenty-five years there will be no farmers to farm it at this rate.

c. Court House Renovations

Ms. Verdery stated there will be some renovations to the Court House. There will be a new elevator installed. Future meetings will be held in the Wye Oak Room at the Community Center. This will be for at least the next three to four months. We will keep the Commission meeting locations posted on the County website.

d. Legislative Day

June 7th is a special legislative day and the County Council will be voting on the Comprehensive Plan. The meeting will be at 2:00 p.m.

695 **7. WorkSessions**

696

697 **8. Commission Matters**

698

699 **9. Adjournment**—Commissioner Fischer adjourned the meeting at 11:00 a.m.

700

701 N:\Planning & Zoning\Planning Commission\Minutes\2016\June\June 1, 2016 Draft Decision Summary.docx